

REMARKS**Preliminary Amendment to the Claims**

Claims 1-47 are pending in the application. With entry of the instant response, claim 22 has been canceled, and claims 21 and 23-24 have been amended. Specifically, claim 21 has been amended to insert the claim element of canceled claim 22. Claims 23 and 24, which previously depend from now canceled claim 22, are amended accordingly to depend from claim 21. These claim amendments evidently do not introduce any new matter.

Response to the Restriction Requirement

In response to the restriction requirement set forth in the Office communication, Applicants hereby elect, without traversal, Group II (claims 21-39) for further examination in the subject application. However, as detailed below, Applicants respectfully traverse the requirement with regard to the requirement for election of species that was also set forth in the Office communication.

In setting forth the various species election requirements, the Examiner asserts that the species recited in the claims "are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1." With due respect, Applicant note that the Examiner has apparently confused the election of species requirement under U.S. restriction practice with the unity of invention standard under PCT rules. In the U.S. restriction practice, an election of species is required in the event no linking claims or generic claims are found allowable. In such an event, an Applicant's invention will be limited to the examined and allowable species. On the other hand, if a generic claim or linking claim which encompass all the recited species are found allowable, all the

recited species will also be allowed. In contrast, the unity of invention standard under PCT rules applies to situations wherein multiple inventions not sharing the same novel technical features are presented in a single application. In these cases, the Applicant will be required to elect just one invention for examination in the application. Unlike the different species that can be all allowed in the same application under U.S. restriction practice (provided the existence of allowable linking or generic claim), the other inventions under the unity of invention practice will have to be pursued in divisional applications.

Turning to the instant case, it is readily apparent that the species election requirement set forth in the instant Office communication should not have been made under the PCT unity of invention practice. Instead, it may be properly raised under the U.S. restriction practice. The different species recited for the claim elements which were required for election do not have different novel technical features so as to amount to different inventions that lack unity. In other words, novel technical feature (or patentability) of the invention does not reside on the recited species themselves. Rather, the recited species are merely different embodiments that are encompassed by the same invention. If the generic claim is allowable, all species recited for the claim element are certainly all allowable.

Subject the above traversal, Application further make election of the following species. It is noted that claims 21 and 23-34 read on the elected species.

Species I - sensitizer molecule: Hematoporphyrin.

Species II- microbe: Salmonella spp.

Species III - microbe: Salmonella typhimurium

Because Applicants have elected a bacterium (i.e., *Salmonella typhimurium*), it would not be appropriate to make additional species elections with regard to Species IV and V which are both directed to viruses. Should the Examiner maintain the requirement of electing Species IV and V, Applicants respectfully request clarification from the Examiner.

In view of the foregoing, Applicants respectfully submit that the claims now pending in the subject patent application are in condition for examination. If needed, the Examiner is invited to telephone Applicant's attorney at (858) 784-2937 to facilitate prosecution of this application.

The Director is hereby authorized to charge our Deposit Account No. 19-0962 in the event that there are any additional charges associated with the present Petition or any Response in connection with this application.

Respectfully submitted,

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Date



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